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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,404	10/28/2003	William L. Grilliot	MOR3334P0890U'S	5637
32116 7590 01/27/2009 WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661				
EXAMINER				
HOEY, ALISSA L				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
01/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/695,404

Applicant(s)

GRILLIOT ET AL.

Examiner

Alissa L. Hoey

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This is in response to amendment received on 11/26/08. Claims 1, 4 and 8 have been amended. Claims 1-8 are examined below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell (US 4,601,066).

Campbell teaches the following:

1. (Currently Amended) A pair of protective pants having an upper portion which when worn covers a wearers torso, between the wearer's waist and the wearers legs, the pair of protective pants having two leg portions, each of which when worn covers one of the wearers legs (figures 1, 2, 5 and 6), wherein each leg portion has an upper region which extends downwardly from the upper portion (48a, 48b), and a lower region (28, 29) which extends upwardly from a lower end of said leg portion toward the upper region and which terminates not higher than where said leg portion when worn covers the wearers knee (figures 1, 2, 5 and 6), wherein the lower region has a puncture-resistant layer (bindings reinforced edges: 55, 57) made from a cloth fabric (see column 4, lines 7-17) , extends upwardly from the lower end of said leg portion (figures 1, 2, 5

and 6), and surrounds the lower end of said leg portion and which is resistant to puncture by snakes or by thorny or spiky plants, wherein the upper region of each leg portion (48a, 48b) has an outer layer of abrasion-resistant material is less resistant to punctures than the puncture-resistant cloth fabric (55, 57: column 4, lines 7-17).

2. (Previously Amended) The pair of protective pants of claim 1 wherein the upper portion also has the outer layer of abrasion-resistant material (48a, 48b).

5. (New) A pair of protective pants having an upper portion which when worn covers a wearer's torso between the wearer's waist and the wearer's legs, the pair of protective pants having two leg portions (48a, 48b), each of which when worn covers one of the wearer's legs (figures 5 and 6), each of the leg portions having an upper region which extends downwardly from the upper portion (48a, 48b), and a lower region (28, 29) which extends upwardly from a lower end of the leg portion toward the upper region and which terminates not higher than where the leg portion covers the wearer's knee when worn (figures 1, 2, 5 and 6), each of the upper and lower regions having an outer layer of material (55, 57, 48a, 48b), and wherein the material of the outer layers of the lower regions (55, 57) has a greater resistance to punctures than the material of the outer layers of the upper regions (identifiers 48a, 48b).

6. (New) The pair of protective pants of claim 5 wherein the upper portion and the upper regions of the leg portions have an outer layer of abrasion-resistant material (48a, 48b).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Eastbay Lined Windpants (see catalog page 19).

Campbell teaches a sports garment with greater puncture-resistant lower leg portions than upper leg portions. However, Campbell fails to teach the pants having one or more inner layers.

In regard to claims 3 and 7, Eastbay teaches a sports pant wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers (see description and picture of Eastbay Lined Windpants: page 19).

In regard to claims 4 and 8, Campbell teaches the upper portion and the upper regions of the leg portions have an outer layer of abrasion-resistant material (48a, 48b).

Eastbay teaches wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers, and wherein only the lower region of each leg portion has the layer of puncture-resistant material (see description and picture of Eastbay Lined Windpants: page 19).

It would have been obvious to have provided the sports pants of Campbell with the reinforced lower leg portions with the lined sports pant of Eastbay, since the sports

pants of Campbell provided with a lining would provide for a pants garment that keeps the wearer warmer and provides for a more comfortable material against the user's skin.

Response to Arguments

6. Applicant's arguments filed 11/26/08 have been fully considered but they are not persuasive.

Applicant argues the Campbell fails to disclose materials having different properties being utilized for its wraps in comparison to its legs.

Examiner notes that the binding of the leg wraps are made out of a material (see column 4, lines 7-14). Bindings are a strip sewn or attached along an edge for protection or reinforcement. The bindings of Campbell (55) would be more resistant to puncture than the material of the remainder of the tights garment.

Claim 1, requires that the lower regions (28, 29) have a puncture resistant layers (55) extending upwardly from the lower end of said leg portions and around the lower end of the leg (see figures 1 and 2, bindings 55 surround the lower end of the leg). Therefore, Campbell still reads on the limitations of claim 1.

Claim 5, requires a lower region (28, 29) extending upwardly from a lower end of the leg portion towards the upper region. The lower portion having an outer layer of material (bindings: 55). The outer layer of material of the lower region having a greater resistance to punctures than the material of the outer layers (48a, 48b) of the upper region. Therefore, Campbell teaches the limitations as claimed.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765